UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: ___________________________

BURGER KING CORPORATION,

Plaintiff,

vs.

FRITZ MANAGEMENT, LLC and GUILLERMO PERALES,

Defendants.
________________________________/

BURGER KING CORPORATION'S
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiff Burger King Corporation ("BKC") sues Defendants Fritz Management, LLC ("Company") and Guillermo Perales ("Guarantor") (Company and Guarantor are hereinafter collectively "Defendants") and states:

1. This is an action to enjoin Defendants' unauthorized use and display of BKC's valuable trademarks and service marks in connection with the unlawful operation of 34 restaurants as authorized BURGER KING® restaurants. Additionally, this is an action for damages due to Defendants' breach of 37 BURGER KING® franchise agreements

THE PARTIES

2. Plaintiff BKC is a Florida corporation with its principal place of business in Miami, Florida.

3. Defendant Company is a Texas limited liability company with its principal place of business in Dallas, Texas.

4. Defendant Perales is a citizen and resident of the State of Texas.

JURISDICTION AND VENUE

5. BKC operates and franchises restaurants throughout the United States. BKC's franchise operations are conducted and supervised from its world headquarters located in Miami, Florida. The parties have carried on a continuous course of direct communications by mail and by telephone through BKC's World Headquarters in Miami, Florida.

6. The course of dealing between BKC and its franchisees, including Defendants, shows that decision-making authority is vested in BKC's World Headquarters in Miami, Florida.

7. Defendants negotiated with BKC in Miami, Florida for the acquisition of long-term franchise agreements with the knowledge that they would benefit from their affiliation with BKC.

8. Defendants voluntarily entered into franchise relationships with BKC which envisioned continuing and wide-reaching contacts with BKC in Florida, including regulation of their franchised businesses from BKC's World Headquarters in Miami, Florida.

9. Defendants have purposefully availed themselves of the benefits and protection of Florida law by entering into franchise and other agreements with BKC which expressly provide that Florida law will govern any disputes among the parties.

10. Defendants have breached contracts required to be performed, in part, in Florida and causing injury to BKC in Florida by failing to operate and maintain the BURGER KING® Restaurants in accordance with the standards and specifications established by BKC, and by conducting themselves in a manner that is deleterious and reflects unfavorably on them and the BURGER KING® Brand.

11. This Court has jurisdiction over this action based upon:

(a) Section 39 of the Lanham Act, 15 U.S.C. 1121, and 28 U.S.C. 1331, 1337,

and 1338 (a), for the claims arising out of Defendants' violations of Sections 32 and 43(a) of the Lanham Act, 15 U.S.C. 1114 and 1125(a);

(b) 28 U.S.C. 1338(b), and the doctrine of supplemental jurisdiction as codified in 28 U.S.C. 1367, for the claims arising out of Defendants' common law unfair competition and Defendants' breach of contract; and

(c) 28 U.S.C. § 1332 as the parties are citizens of different states and the amount in controversy exceeds $75,000.00.

12. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391 as a substantial part of the events and omissions giving rise to BKC's claims occurred within this judicial district. Additionally, the parties have agreed that this Court shall have exclusive jurisdiction regarding the claims asserted in this suit.

13. Defendants have agreed in writing that in any litigation to enforce the terms of the franchise agreements between BKC and Defendants, BKC, as the prevailing party, shall be paid by Defendants all costs, including attorneys' fees, incurred as a result.

14. BKC has engaged undersigned counsel and has agreed to pay counsel reasonable attorneys' fees for all services rendered in this action and otherwise in connection with enforcing the agreements between BKC and Defendants.

15. All conditions precedent to the institution of this action have been satisfied, discharged, excused, and/or waived.

THE BKC MARKS

16. To identify the source, origin, and sponsorship of BKC's facilities, products, and services, BKC has extensively employed, caused to be advertised, and publicized throughout the United States certain distinctive symbols as trademarks and service marks (the "BKC Marks").

BKC was the first to adopt and use the BKC Marks as trademarks and service marks, and all right, title, and interest to the BKC Marks and the design, decor, and image of BURGER KING® Restaurants remain vested solely in BKC.

17. BKC operates and franchises BURGER KING® Restaurants using the BKC Marks on signs, menu boards, posters, translights, uniforms, plates, cups, tray liners, and other items, and in advertising to the public through television, radio, and print media.

18. Set forth below is an abbreviated listing of the BKC Marks registered in the United States Patent and Trademark Office:

Reg. No.	**Mark**	**Issue Date**
0782990	HOME OF THE WHOPPER	1965 (renewed through 2025)
0869775	BURGER KING	1969 (renewed through 2029)
0899775	WHOPPER	1970 (renewed through 2020)
0901311	BURGER KING logo	1970 (renewed through 2020)
1057250	BURGER KING logo	1977 (renewed through 2027)
1081348	HAVE IT YOUR WAY	1978 (renewed through 2028)
1550398	CROISSAN'WICH	1989 (renewed through 2019)
2428846	BURGER KING Crescent Logo	2001 (renewed through 2021)

19. The registrations of the BKC Marks are currently in full force and effect, and BKC has given notice to the public of the registration of the BKC Marks as provided in 15 U.S.C. §1111. BKC owns each of the registrations for the BKC Marks listed above. BKC has the exclusive right to use the BKC Marks in the United States.

20. Pursuant to franchise agreements between BKC and its franchisees, BKC grants its franchisees a limited license and authority to use and display the BKC Marks, but only in such manner, and at such locations and times, as are expressly authorized by BKC. In no event is a franchisee authorized to use the BKC Marks after the expiration or termination of its franchise. Such unauthorized use is expressly prohibited under the terms of all BKC franchise agreements, including Defendants’ BURGER KING® Restaurant Franchise Agreements with BKC.

21. BKC's products bearing the BKC Marks are offered and sold in interstate commerce.

22. BKC and its franchisees have spent many millions of dollars in the United States and abroad advertising and promoting BKC's restaurants, services, and products.

23. The substantial investment made in the BKC Marks has resulted in valuable good will for the BKC Marks and for the restaurants, products, and services bearing those marks. BKC products and services have met with popular approval and, as a result of BKC's extensive sales, advertising, promotion, and publicity, the public is familiar with the BKC Marks. The products and services associated with the BKC Marks are understood by the public to be produced, marketed, sponsored, supplied by, and/or affiliated with BKC.

THE BURGER KING SYSTEM

24. BKC has developed a comprehensive restaurant operating system for all BKC franchisees in order to protect the image of BURGER KING® Restaurants and to ensure uniform, high quality standards. The detailed specifications and procedures of the "Burger King System" are set forth in BKC's Manual of Operating Data (the "OPS Manual").

25. Every BKC franchisee is required by its franchise agreement to operate its franchise in accordance with the specifications and procedures contained in the OPS Manual. The OPS Manual sets forth in detail the mandatory BKC restaurant operating standards, specifications, and procedures, including rules governing areas such as food preparation and handling, cleanliness, health, sanitation, quality, and speed of service. In addition to these strict quality, service, and cleanliness requirements, the OPS Manual prescribes specified training procedures to ensure that these requirements are met. The OPS Manual is a confidential BKC document which a franchisee is permitted to have only during the term of the franchise

agreement.

26. BKC offers a broad range of services to its franchisees in order to monitor and assist a franchisee's compliance with these standards, including training for various levels of personnel as well as other regional and local training and instructional programs. This enables BKC to safeguard the integrity of BURGER KING® Restaurants, the BURGER KING® System, and the BKC Marks.

27. Integral to BKC's compliance and assistance program are periodic inspections and consultations undertaken by BKC personnel and designees specially trained to observe and advise in all areas of restaurant operating procedure. Pursuant to BKC's restaurant visitation process, action plans are issued after a restaurant inspection is conducted. These action plans serve as a training opportunity for the franchisee and as a quality assurance process for BKC to ensure that critical quality, service, and cleanliness standards are being met by the franchisee. Each BURGER KING® Restaurant Franchise Agreement confers upon BKC the right to enter the restaurant premises to perform this vital function.

28. As a result of its substantial expenditures of money and effort in developing and implementing the BURGER KING® System, BKC has established a high reputation and a positive image with the public as to the quality of products and services available at BURGER KING® Restaurants, which reputation and image have been, and continue to be, valuable assets of BKC. BKC strives to maintain that reputation through its careful selection of authorized franchise owners, facilities, and locations and its careful supervision over the manner and quality of its restaurant service.

BKC'S AGREEMENTS WITH DEFENDANTS

Texas Franchise Agreements

29. Company owned and operated 34 restaurants as franchised BURGER KING® Restaurants (collectively the "Texas Restaurants") in accordance with the terms and conditions of 34 separate BURGER KING® Restaurant Franchise Agreements (collectively the "Texas Franchise Agreements").

30. The BURGER KING® restaurant numbers of the Texas Restaurants, locations, and dates of the Texas Franchise Agreements are set forth below:

BURGER KING® Restaurant No.	Address	Franchise Agreement Dated
1904	1101 S 10th St. Mcallen, TX	12/31/2012
2477	925 North Frontage Road Brownsville, TX	08/14/2014
3245	400 North Jackson Road Pharr TX	12/04/2015
4539	1902 S 77 Sunshine Strip Harlingen, TX	05/27/2015
4824	1700 N 23rd St Mcallen, TX	10/12/2018
6417	1520 S. Closner Street, Edinburg, TX	05/27/2015
7183	2414 East Expressway 83, Mission, TX	12/31/2012
7354	700 W Nolana Ave Mcallen, TX	12/31/2012
8322	1200 E Interstate 2 Pharr, TX	12/31/2012
9444	1925 West Tyler Harlingen, TX	12/28/2016
9519	2301 North Conway Mission, TX	12/31/2012
9688	2313 W Military Hwy McAllen, TX	12/28/2016
9689	2120 North La Homa Road Palmview, TX	03/21/2016
9726	1617 North Texas Weslaco, TX	12/28/2016

9880	1702 West University Edinburg, TX	12/28/2016
9930	101 West Nolana Loop Pharr, TX	12/31/2012
9951	807-D Frontage Road Donna, TX	12/31/2012
11180	601 South Sam Houston San Benito, TX	03/21/2016
11573	104 South Expressway 281 Edinburg, TX	12/31/2012
11752	1100 East Main Street Rio Grande City, TX	03/21/2016
12385	446 East Frontage Road Alamo, TX	12/31/2012
12431	4006 South Mc Coll Road Edinburg, TX	12/28/2016
12501	390 E Grant St Roma, TX	12/14/2018
13002	1300 Central Brownsville, TX	12/19/2018
13003	419-1/2 South International Weslaco, TX	12/28/2016
13145	3585 West Alton Gore Brownsville, TX	12/31/2012
13286	100 South International Hidalgo, TX	12/17/2018
13392	1102 North Main La Feria, TX	12/15/2017
13425	7209 N 23rd St McAllen, TX	12/31/2012
15814	688 East Expressway 83 La Joya, TX	11/02/2006
16479	2511 South Cage Pharr, TX	03/12/2008
16490	1681 State Highway 100 Port Isabel, TX	03/07/2008
16761	3700 Buddy Owens Ave McAllen, TX	09/30/2008
19886	4534 E US HIGHWAY 83 Rio Grande City, TX	11/02/2013

Brownsville Franchise Agreements

31. Company owns and operates 3 restaurants in Brownsville, Texas as franchised BURGER KING® Restaurants (collectively the “Brownsville Restaurants”) in accordance with

the terms and conditions of 3 separate BURGER KING® Restaurant Franchise Agreements (collectively the "Brownsville Franchise Agreements").(The Brownsville Franchise Agreements and the Texas Franchise Agreements are hereinafter collectively the "Franchise Agreements" and the Brownsville Restaurants and the Texas Restaurants are hereinafter collectively referred to as the "Restaurants").

32. The BURGER KING® Restaurant numbers of the Brownsville Restaurants, locations, and dates of the Brownsville Franchise Agreements are set forth below:

BURGER KING® Restaurant No.	**Address**	**Franchise Agreement Dated**
9330	7411 Padre Island Brownsville, TX	12/13/1995
10849	3100 Boca Chica Blvd. Brownsville, TX 78521	8/25/1997
13370	3235 International Blvd. Brownsville, TX 78521	6/26/2000

Guarantees

33. Pursuant to written guarantees (the "Guarantees"), the Guarantor (who is the managing owner of Company) absolutely and unconditionally personally guaranteed the payment and performance of each and every obligation of Company to BKC under the Franchise Agreements.

FRANCHISEE OBLIGATIONS, DEFAULT AND TERMINATION

34. The Franchise Agreements require Company to, among other things, operate the Restaurants in accordance with the operating standards and specifications established by BKC as to service, cleanliness, health and sanitation.

35. The Franchise Agreements contain provisions regarding default and establishing the parties' rights and obligations in the event of a default by Company, the franchisee, under the Franchise Agreements. The relevant terms of the Franchise Agreements provide that a

franchisee's failure to comply with any provision of the Franchise Agreement is a default of the Franchise Agreement. The Franchise Agreements further provide that "[i]f an act of default hereunder is committed by FRANCHISEE, and FRANCHISEE fails to cure the default after any required notice and within the cure period applicable, BKC may, at its option and without prejudice to any other rights or remedies provided for hereunder or by law, terminate the Franchise Agreement by written notice or otherwise."

36. All of the Franchise Agreements provide in pertinent part that conduct by Company (the franchisee) or the Guarantor (who is the managing owner) which is deleterious to or reflects unfavorably on the franchisee or the BURGER KING® Restaurant System by exhibiting a reckless disregard for the physical and mental well-being of employees, customers, BKC representatives or the public at large constitutes a default. The Texas Franchise Agreements also state, respecting those 34 restaurants, that if this act of default occurs, BKC has the right to terminate the franchise agreement, and such termination shall be effective upon notice to the franchisee with no opportunity to cure.

37. In February 2019, BKC learned that Defendants engaged in conduct which is deleterious to and reflects unfavorably on them and the BURGER KING® Restaurant System by exhibiting a reckless disregard for the physical and mental well-being of employees, customers, BKC representatives or the public at large.

38. As a result, BKC notified Defendants, by letter dated February 15, 2019, that they were in default at BK #4539 and demanded that they perform numerous actions in order to cure the default.

39. Thereafter, on February 25-26, 2019, Defendants' conduct received negative media attention in their area and in other parts of the United States. Defendants' conduct also

generated significant negative social media comments about the BURGER KING® Restaurant system.

40. Defendants' conduct negatively impacted sales in the DMA. This impact has worsened over time.

41. The incidents at BK #4539 were not isolated. BKC accelerated its routine inspection process in the market where BK # 4539 is located and began immediate inspections of all of Defendants' restaurants there. This prompted Defendants to close four locations prior to inspection. Additionally, as a result of these inspections, BKC demanded that Defendants close two additional restaurants.

42. As a result of Defendants' conduct set forth above, BKC notified Defendants, by letter dated March 22, 2019, that they were in default under the Texas Franchise Agreements and that, in accordance with the Texas Franchise Agreements, there was no opportunity to cure the default, resulting in the termination of the Texas Franchise Agreements effective as of the date of the letter.

43. Additionally, by letter dated March 22, 2019, BKC notified Defendants that their conduct also constituted a default under the Brownsville Franchise Agreements and demanded that they cure the defaults within 30 days from receipt of the letter or 33 days from the date of the letter, whichever was earlier.

Termination

44. Terminated franchisees are prohibited from identifying themselves as either a current or former BURGER KING® Franchisee, from displaying or using any of BKC's trade secrets, promotional materials, the BKC Marks, or any mark confusingly similar. Terminated franchisees are further required, upon termination or expiration of their BURGER KING®

Restaurant Franchise Agreement, to immediately make such removals or changes in signs and the building as BKC shall request so as to effectively distinguish the building and premises from its former appearance and from any other BURGER KING® restaurant.

45. In violation of the Texas Franchise Agreements, Defendants continue to hold themselves out to the public as owning and/or operating genuine and authorized BURGER KING® Restaurants by continuing to display and/or use the BKC Marks at the Texas Restaurants subsequent to the Texas Franchise Agreements' termination. Specifically, Defendants continue to operate the Texas Restaurants, despite termination. In so doing, Defendants are infringing upon the BKC Marks and breaching their explicit obligations under the Texas Franchise Agreements.

46. Additionally, Defendants have not returned the OPS Manual and other operational manuals to BKC as required by the Texas Franchise Agreements.

LIKELIHOOD OF CONSUMER CONFUSION AND DECEPTION

47. Defendants have not tendered to BKC or removed all BURGER KING® signs, logos, menu boards, posters, translights, uniforms, plates, cups, tray liners, and other items bearing the BKC Marks, name, symbols, or slogans, or which are otherwise identified with BURGER KING® Restaurants and are located at the Texas Restaurants.

48. Defendants' continued use of the BKC Marks or any items associated with the BURGER KING® name, symbols, or slogans at the Texas Restaurants is without BKC's license or consent, and has caused or is likely to cause mistake, confusion, or deception in the minds of the public as to source, affiliation, and sponsorship. Upon seeing the familiar BKC Marks, through Defendants' unauthorized use or display thereof, consumers will be deceived into concluding that the products and services sold at the Texas Restaurants are made or supplied by

BKC, are prepared in the prescribed BKC manner and subject to BKC's supervision, are sponsored or endorsed by BKC, and bear the BKC Marks pursuant to BKC's authority and permission. Such impressions are calculated to and will have a material influence on customers' purchasing decisions, inducing them to patronize the Texas Restaurants in reliance on the goodwill, reputation, and appeal of BKC.

49. By reason of the foregoing, BKC has suffered damages, in an amount presently unknown yet substantial. BKC is no longer is the source or sponsor of the Texas Restaurants and does not endorse said Texas Restaurants, or the products and services provided therein, has not authorized Defendants to use or display the BKC Marks to identify the terminated franchise facilities, products, or services, and has protested expressly against such use.

50. By virtue of the termination of the Texas Franchise Agreements, BKC is unable to control the nature and quality of the goods and services that Defendants provide at the Texas Restaurants.

51. BKC will suffer serious, immediate, and irreparable harm if Defendants' willful infringement of the BKC Marks at the Texas Restaurants is not immediately enjoined. BKC's goodwill and reputation will suffer drastically by virtue of the public's identification of BKC with the management and operation of the Texas Restaurants. In fact, there is no way to measure the customers lost due to Defendants' gross neglect.

52. BKC exercises strict quality control over every phase in the marketing of BURGER KING® products and services, from specification of ingredients, to the supervision of food preparation and handling, to the maintenance of strict standards as to cleanliness, health, sanitation, and quality of service. The carefully nurtured image which BKC now enjoys will be irretrievably injured by any association with the Texas Restaurants, which no longer are subject

to BKC's control and supervision.

53. Defendants' sale of products and services under the BKC Marks at the Texas Restaurants poses an immediate threat to the distinct, exclusive image BKC has created at great expense for its franchisees. BURGER KING® Restaurants, services, and products are known by the BKC Marks which are emblematic of their distinctive source. BURGER KING® Restaurants enjoy a special appeal to consumers which will be diluted by the existence of infringing restaurants with products and services bearing the distinctive BKC Marks. The intangible, but commercially indispensable, value that the BURGER KING® Restaurants now enjoy will be severely undermined by the operation of the Texas Restaurants, which are making unauthorized use of the BKC Marks.

54. Consumer confusion as to the source or sponsorship of restaurants bearing the BKC Marks will be attended not only by an inevitable loss of product distinctiveness, image, and goodwill, but will also cause a diversion of sales from BKC. The economic injury to BKC resulting from such diversion is incalculable and, as such, is an additional source of irreparable harm.

COUNT I
LANHAM ACT INFRINGEMENT

55. BKC re-alleges Paragraphs 1 through 54 above as if fully set forth herein.

56. With respect to the Texas Restaurants, Defendants' acts constitute infringements of BKC's registered trademarks and service marks in violation of Section 32 of the Lanham Act, 15 U.S.C. 1114.

COUNT II
LANHAM ACT FALSE DESIGNATIONS

57. BKC re-alleges Paragraphs 1 through 54 above as if fully set forth herein.

58. With respect to the Texas Restaurants, Defendants' acts constitute false designations of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. 1125(a).

COUNT III
COMMON LAW TRADEMARK INFRINGEMENT

59. BKC re-alleges Paragraphs 1 through 54 above as if fully set forth herein.

60. With respect to the Texas Restaurants, Defendants' acts constitute unlawful trademark and service mark infringements under the common law.

COUNT IV
COMMON LAW UNFAIR COMPETITION

61. BKC re-alleges Paragraphs 1 through 54 above as if fully set forth herein.

62. With respect to the Texas Restaurants, Defendants' acts constitute unfair competition under the common law.

COUNT V
BREACH OF TEXAS FRANCHISE AGREEMENTS

63. BKC re-alleges Paragraphs 1 through 54 above as if fully set forth herein.

64. Company defaulted under the Texas Franchise Agreements as a result of the deleterious conduct of Defendants which reflects unfavorably on Company and the BURGER KING® Restaurant Systems by exhibiting a reckless disregard for the physical and mental wellbeing of employees, customers, BKC representatives or the public at large.

65. These breaches have directly and proximately caused loss and damage to BKC.

66. Additionally, Company's operation of the Texas Restaurants after termination of the Texas Franchise Agreements and failure to abide by the post termination covenants is also a breach of the Texas Franchise Agreements. These breaches have directly and proximately caused loss and damage to BKC.

COUNT VI
BREACH OF BROWNSVILLE FRANCHISE AGREEMENTS

67. BKC re-alleges Paragraphs 1 through 54 above as if fully set forth herein.

68. Company defaulted under the Brownsville Franchise Agreements as a result of the deleterious conduct of Defendants which reflects unfavorably on Company and the BURGER KING® Restaurant Systems by exhibiting a reckless disregard for the physical and mental wellbeing of employees, customers, BKC representatives or the public at large.

69. These breaches have directly and proximately caused loss and damage to BKC.

COUNT VII
BREACH OF GUARANTEES

70. BKC re-alleges Paragraphs 1 through 54, 64 through 66 and 68 above as if fully set forth herein.

71. Pursuant to the Guarantees, Guarantor unconditionally and irrevocably personally guaranteed to BKC the payment and performance of each and every obligation of Company under the Franchise Agreements, should Company fail to perform such obligations.

72. Company defaulted under the Franchise Agreements.

73. The failure of Guarantor to ensure Company's compliance with the Franchise Agreements constitutes breaches of the Guarantees.

74. As a direct and proximate result of the breaches of the Guarantees, BKC has been damaged.

DEMAND FOR ATTORNEYS' FEES

75. The Franchise Agreements and Guarantees at issue in this litigation provide that the prevailing party is entitled to its attorneys' fees and costs. Pursuant to those provisions, BKC hereby demands that it be reimbursed by Defendants for all costs and expenses (including

attorneys' fees) relating to prosecution of this action.

REQUEST FOR RELIEF

WHEREFORE, Burger King Corporation demands judgment against Defendants Fritz Management, LLC and Guillermo Perales:

1. For preliminary and permanent injunctions enjoining Defendants, and all persons acting on their behalf, in concert with them, or under their control, from:

(a) manufacturing, packaging, distributing, selling, advertising, displaying, or promoting any product or service bearing any of the BKC Marks, or any colorable imitation thereof at the Texas Restaurants;

(b) displaying or using any of the BKC Marks to advertise or promote the sale of, or to identify, the Texas Restaurants, or any product or service provided therein; and

(c) making in any manner whatsoever any statement or representation, or performing any act, likely to lead members of the public to believe that Defendants, the Texas Restaurants, and the products and services provided therein, are in any manner, directly or indirectly, associated, affiliated, or connected with, or licensed, sponsored, authorized, or approved by Burger King Corporation.

2. For preliminary and permanent injunctions directing Defendants, and all persons acting on their behalf, in concert with them, or under their control, to, with respect to the Texas Restaurants:

(a) recall and deliver up to Burger King Corporation all signs, banners, labeling, packaging, advertising, promotional, display, and point-of-purchase materials which bear, or make reference to, any of the BKC Marks, or any colorable imitation of the BKC Marks;

(b) recall and deliver up to Burger King Corporation all copies and editions of the OPS Manuals that are in their actual or constructive, direct or indirect, possession, custody or control, including all supplements and addenda thereto, and all other materials containing restaurant operating instructions, restaurant business practices, or plans of Burger King Corporation;

(c) allow Burger King Corporation, at a reasonable time, to enter the premises of the Texas Restaurants and make whatever changes, including removal of tangible assets, that are necessary to distinguish the premises from their appearance as a BURGER KING® Restaurant;

(d) account and pay over to Burger King Corporation all gains, profits, and advantages derived by Defendants from the trademark and service mark infringement, breach of contract, and unfair competition to the full extent provided for by Section 35 of the Lanham Act, 15 U.S.C. §1117, and by the controlling principles of common law.

3. For money damages, plus three times additional actual damages BKC has sustained by reason of Defendants' trademark and service mark infringement, breach of contract, and unfair competition, pursuant to Section 35 of the Lanham Act, 15 U.S.C. §1117;

4. For punitive damages because of the willful nature of Defendants' actions;

5. For pre-judgment interest and Burger King Corporation's reasonable attorneys' fees incurred in protecting its rights in this action in accordance with the terms of the Franchise Agreements and, because of the willful nature of the infringement, pursuant to Section 35 of the Lanham Act, 15 U.S.C. §1117;

6. For an order enjoining Defendants from operating a quick service hamburger

restaurant within a two-mile radius of the Texas Restaurants for a one-year period;

7. For an order directing Defendants to file with the Court, and to serve on Burger King Corporation's counsel within ten days after service of any injunction or order issued herein, or within such a reasonable time as the Court shall direct, a report, in writing and under oath, setting forth in detail the manner in which Defendants have complied with such injunction or order;

8. For all costs, disbursements, and expenses of this action; and

9. For all such other relief as this Court may deem just and proper.

10. Plaintiff Burger King Corporation demands judgment against Defendants Fritz Management, LLC and Guillermo Perales, jointly and severally, for damages, including lost profits, attorneys' fees, interest and costs pursuant to the Franchise Agreements and Guarantees, and for such other relief as this Court deems just and proper.

Dated: April 5, 2019.
Miami, Florida

Respectfully submitted,

/s/ Michael D. Joblove
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2000-715 / #166

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

BURGER KING CORPORATION

(b) County of Residence of First Listed Plaintiff ____________
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Michael D. Joblove, Esq., Genovese, Joblove & Battista, PA
100 SE 2nd Street, 44th floor, Miami, FL 33131 (305) 349-2300

DEFENDANTS

FRITZ MANAGEMENT, LLC and GUILLERMO PERALES

County of Residence of First Listed Defendant ____________
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☒ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
15 U.S.C. § 1114 and 15 U.S.C. § 1125

Brief description of cause:
Lanham Act and Breach of Contract

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ____________ DOCKET NUMBER ____________

DATE 4-4-19 SIGNATURE OF ATTORNEY OF RECORD [signature]

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

BURGER KING CORPORATION,

Plaintiff(s)

v.

FRITZ MANAGEMENT, LLC and
GUILLERMO PERALES

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

GUILLERMO PERALES
4515 Lyndon B Johnson Fwy.
Dallas, TX 75244-5905

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael D. Joblove, Esq.
Genovese, Joblove & Battista, P.A.
100 S.E. Second Street, 44th Floor
Miami, Florida 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: ____________________

____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* ______________________

was received by me on *(date)* ______________ .

❒ I personally served the summons on the individual at *(place)* ______________________

______________________ on *(date)* ______________ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* ______________

______________________ , a person of suitable age and discretion who resides there,

on *(date)* ______________ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* ______________________ , who is

designated by law to accept service of process on behalf of *(name of organization)* ______________

______________________ on *(date)* ______________ ; or

❒ I returned the summons unexecuted because ______________________ ; or

❒ Other *(specify)*:

My fees are $ __________ for travel and $ __________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: ______________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

BURGER KING CORPORATION,

Plaintiff(s)

v.

FRITZ MANAGEMENT, LLC and
GUILLERMO PERALES

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

FRITZ MANAGEMENT, LLC
By Serving Its Registered Agent:
Corporate Creations Network Inc.
2425 W. Loop South, #200
Houston, TX 77027

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael D. Joblove, Esq.
Genovese, Joblove & Battista, P.A.
100 S.E. Second Street, 44th Floor
Miami, Florida 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: ____________________

____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* ______________________
was received by me on *(date)* ______________ .

❒ I personally served the summons on the individual at *(place)* ______________________
______________________ on *(date)* ______________ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* ______________
______________________ , a person of suitable age and discretion who resides there,
on *(date)* ______________ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* ______________________ , who is
designated by law to accept service of process on behalf of *(name of organization)* ______________
______________________ on *(date)* ______________ ; or

❒ I returned the summons unexecuted because ______________________ ; or

❒ Other *(specify)*:

My fees are $ ________ for travel and $ ________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: ______________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc: